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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DAVID Q WEBB,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. 3:19-CV-05561-BHS-DWC

ORDER TO SHOW CAUSE OR AMEND

15 The District Court has referred this action to United States Magistrate Judge David W.
16 Christel. On June 19, 2019, Petitioner David Q. Webb, a pre-trial detainee housed at Kitsap
17 County Jail, filed a proposed federal habeas Petition pursuant to 28 U.S.C. § 2241. Dkt. 1.
18 Petitioner paid the filing fee on July 9, 2019 and, on July 11, 2019, Petitioner filed an Amended
19 Petition. *See* Dkt. 5. The Court has reviewed the Amended Petition and the Amended Petition
20 appears moot and is unexhausted. Further, it is inappropriate for the Court to intervene in this
21 case. Therefore, the Court directs Petitioner to file a response to this Order or an amended
22 pleading by September 6, 2019.
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1 **I. Background**

2 In the Amended Petition, Petitioner contends his First, Fourth, Fifth, Sixth, Eighth, and
3 Fourteenth Amendment rights have been violated related to his pending state criminal
4 proceedings. Dkt. 5. Petitioner requests the Court dismiss the criminal cases pending against him
5 and admonish Kitsap County, the Port Orchard Police Department, and the Gig Harbor Police
6 Department. *Id.* Petitioner, however, states the charges against him have been dismissed. *Id.*

7 **II. Discussion**

8 A. Moot

9 Petitioner’s claims arise from his state criminal proceedings and Petitioner requests the
10 Court dismiss the criminal charges against him. Dkt. 5, p. 38. A pretrial detainee is not a “person
11 in custody pursuant to the judgment of a State Court” within the meaning of § 2254(a); however,
12 habeas corpus jurisdiction arises pursuant to 28 U.S.C. § 2241(c)(3), for prisoners whose custody
13 is “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §
14 2241(c)(3).

15 For a federal court to have jurisdiction over a case, there must be an actual case or
16 controversy at the time the case is decided. *See Preiser v. Rodriguez*, 422 U.S. 475, 401 (1973)
17 (citations omitted) (“The rule in federal cases is that an actual controversy must be extant at all
18 stages of review, not merely at the time the complaint is filed.”). If a party seeking relief cannot
19 obtain the requested relief, that claim is moot and must be dismissed for lack of jurisdiction.
20 *Ruvalcaba v. City of L.A.*, 167 F.3d 514, 521 (9th Cir. 1999).

21 Here, Petitioner requests the Court dismiss his state criminal charges. Dkt. 5, p. 38.
22 However, he admits the state criminal charges against him have been dismissed. *See id.* at pp.
23 35-37; 48-49, 62-63. As the criminal charges have been dismissed, Petitioner cannot obtain the
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1 requested relief, making the claims in the Amended Petition moot. Thus, Petitioner must show
2 cause why this case should not be dismissed for lack of jurisdiction. *See Ayala v. Presiding*
3 *Judge of Superior Court of California Cty. of San Bernardino*, 2014 WL 2608130, at *3 (C.D.
4 Cal. May 5, 2014), *report and recommendation adopted*, 2014 WL 2608125 (C.D. Cal. June 10,
5 2014).

6 B. Exhaustion

7 “[A] state prisoner must normally exhaust available state judicial remedies before a
8 federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275
9 (1971). Petitioner’s claims will be considered exhausted only after “the state courts [have been
10 afforded] a meaningful opportunity to consider allegations of legal error without interference
11 from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “[S]tate prisoners must
12 give the state courts one full opportunity to resolve any constitutional issues by invoking one
13 complete round of the State’s established appellate review.” *O’Sullivan v. Boerckel*, 526 U.S.
14 838, 845 (1999).

15 Although there is no exhaustion requirement mandated by 28 U.S.C. § 2241(c)(3), the
16 Ninth Circuit Court of Appeals has held exhaustion is necessary as a matter of comity unless
17 special circumstances warrant federal intervention prior to a state criminal trial. *Carden v.*
18 *Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980); *see Younger v. Harris*, 401 U.S. 37 (1971).
19 Petitioner fails to show he exhausted state court remedies by presenting federal constitutional or
20 statutory claims to the Washington state trial and appellate courts in the ongoing criminal
21 proceedings against him. Petitioner has also not shown special circumstances warrant federal
22 intervention in this case. Therefore, Petitioner must show cause why this case should not be
23 dismissed for failure to exhaust state remedies.

1 C. Younger Abstention

2 Petitioner's case may also be inappropriate in federal court under the *Younger* abstention
3 doctrine. Under *Younger*, abstention from interference with pending state judicial proceedings is
4 appropriate when: "(1) there is 'an ongoing state judicial proceeding'; (2) the proceeding
5 'implicate[s] important state interests'; (3) there is 'an adequate opportunity in the state
6 proceedings to raise constitutional challenges'; and (4) the requested relief 'seek[s] to enjoin' or
7 has 'the practical effect of enjoining' the ongoing state judicial proceeding." *Arevalo v.*
8 *Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State Comp.*
9 *Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)). Federal courts, however, do not invoke the
10 *Younger* abstention if there is a "showing of bad faith, harassment, or some other extraordinary
11 circumstance that would make abstention inappropriate." *Middlesex County Ethics Comm'n v.*
12 *Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982).

13 Here, some of Petitioner's claims appear to implicate *Younger*. First, Petitioner is a pre-
14 trial detainee with ongoing state proceedings. While he states the charges have been dismissed
15 against him, he is still being housed at the Kitsap County Jail. *See* Dkt. 5. Thus, if the charges
16 have not been dismissed, Petitioner's state proceedings are ongoing. Second, as these
17 proceedings involve a criminal prosecution, they implicate important state interests. *See Kelly v.*
18 *Robinson*, 479 U.S. 36, 49, (1986); *Younger*, 401 U.S. at 43-44. Third, Petitioner has failed to
19 allege facts showing he has been denied an adequate opportunity to address the alleged
20 constitutional violations in the state court proceedings. Last, Petitioner raises some claims that
21 would effectively enjoin the ongoing state judicial proceeding. For example, Petitioner
22 challenges the evidence and the charges against him, which could implicate *Younger*. However,
23 Petitioner also alleges his bail is excessive in violation of the Eighth Amendment, which may not
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1 require the federal court to abstain from hearing this case. *See Arevalo*, 882 F.3d at 766 (finding
2 *Younger* abstention not appropriate where the issues raised challenged a bail hearing). As the
3 *Younger* abstention may apply to several of Petitioner's claims, Petitioner must show cause why
4 this case should not be dismissed under *Younger*.

5 D. Conditions of Confinement

6 The Court notes Petitioner may be attempting to challenge the conditions of his
7 confinement, not his physical confinement itself. If he is attempting to challenge the conditions
8 of his confinement, Petitioner must file a civil rights action under 42 U.S.C. § 1983. *See Badea v.*
9 *Cox*, 931 F.3d 573, 574 (9th Cir. 1991).

10 **III. Instructions to Petitioner and the Clerk**

11 If Plaintiff intends to pursue this § 2241 habeas action, he must file response to this Order
12 and an amended petition on the form provided by the Court. The amended petition must be
13 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should
14 contain the same case number, and it may not incorporate any part of the original complaint by
15 reference. The amended petition will act as a complete substitute for the Petition and Amended
16 Petition, and not as a supplement.

17 If Plaintiff fails to adequately address the issues raised herein or file an amended pleading
18 on or before September 6, 2019, the undersigned will recommend dismissal of this action.

19 The Clerk is directed to provide Petitioner with the forms for filing a petition for habeas
20 corpus relief pursuant to 28 U.S.C. § 2241 and forms for filing a civil rights complaint.

21 Dated this 6th day of August, 2019.

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23 David W. Christel
24 United States Magistrate Judge